

Guidance on the compliance adviser requirement for newly listed issuers

A. Background and purpose

1. The objective of the compliance adviser requirements is to ensure that directors of newly listed issuers receive the guidance and advice of an appropriately qualified firm in the period immediately following listing.
2. This letter reminds newly listed issuers of their obligations under the compliance adviser rules and gives guidance to issuers on its communication with their compliance advisers.

B. Relevant Listing Rules

3. Under Main Board Rule 3A.19 (GEM Rule 6A.19), an issuer must retain a compliance adviser to assist its compliance with the Listing Rules and all other applicable laws and regulations commencing on its listing and until the publication of its financial results for the first full financial year after listing.
4. Main Board Rule 3A.23 (GEM Rule 6A.23) sets out specific circumstances under which a newly listed issuer is obliged to consult with, and if necessary, seek advice from their compliance advisers on a timely basis:
 - before publication of any regulatory announcement, circular or financial report;
 - where a transaction, which might be a notifiable or connected transaction, is contemplated including share issues, sales or transfers of treasury shares and share repurchases;
 - where the issuer proposes to use the listing proceeds differently to the manner detailed in the listing document or where the issuer's business activities, developments or results deviate from any forecast, estimate or other information in the listing document; and
 - where the Exchange makes an inquiry of the issuer under Main Board Rule 13.10 (GEM Rule 17.11).
5. Main Board Rule 3A.24 (GEM Rule 6A.24) sets out the compliance adviser's role in the circumstances described above. For example, a compliance adviser should:
 - no less frequently than at the time when the compliance adviser reviews the issuer's financial reporting and when notified of a proposed change of use of IPO proceeds, discuss with the issuer:
 - its operating performance, financial condition by reference to its business plan and the use of proceeds set out in its listing document;

- its achievement of any profit forecast or estimate set out in its listing document; and
 - its compliance with any waivers granted by and any undertakings provided to the Exchange.
- advise the issuer on any connected transaction waiver application; and
 - assess the understanding of all new appointees to the board of the issuer regarding the nature of their responsibilities and fiduciary duties as a director.
6. A compliance adviser may also act as an additional communication channel to maximise the effectiveness of communication between an issuer and the Exchange, including:
- accompanying an issuer to attend meetings with the Exchange; and
 - dealing with the Exchange in respect of any or all matters listed in paragraph 4 above.

C. Guidance

7. A compliance adviser should guide the newly listed issuer on compliance with the Listing Rules and all other applicable laws, rules, codes and guidelines. It could only discharge this responsibility upon being approached by the issuer for advice and provided with adequate information.
8. The Exchange notes that some issuers breached the Listing Rules because their directors and/or responsible officers did not clearly understand the Listing Rules and failed to consult with their compliance advisers. Accordingly, issuers are encouraged to work closely with their compliance advisers. In particular, it should
- proactively discuss and seek advice from its compliance adviser on matters described under paragraph 4 above as required by the Listing Rules;
 - maintain regular contact with its compliance adviser and keep it apprised of developments and proposed corporate actions. Given the wide scope of circumstances specified in paragraph 4, an issuer who is unsure about whether its proposed corporate action is subject to a Listing Rule should proactively discuss and seek confirmation from its compliance adviser as soon as possible; and
 - allow adequate time for the compliance adviser to review the matter and provide advice, and for the issuer to consider and if necessary, act on the advice. For example, given that the publication of an announcement is time critical, the issuer should ensure that its compliance adviser is notified and provided with the draft announcement and information as it may reasonably require well in advance of the proposed publication date. An issuer should also be mindful to inform its compliance adviser when a transaction is contemplated, rather than after the relevant agreement has been signed or the transaction completed.

This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Listing Rules, or this letter.

